LEGISLATION

Cape May County Tourism Sales Tax

P.L. 2002, C. 72 — Tourism Development District Levies
(Signed into law on August 14, 2002) Authorizes new, and broadens existing, tourism development district levies; revises the uses to which current tourism levies may be put; and allows the Greater Wildwood Tourism Improvement and Development Authority (Authority) to engage in broader tourism marketing efforts.

Under the Act, municipalities in the tourism development district are authorized to impose, in addition to the existing retail receipts tax, a 1.85% tourism assessment on hotel room rentals (including motels, boarding houses, and other transient accommodations). The tourism assessment will be administered by the Division of Taxation and will be collected concurrently with the existing tax on predominantly tourism-related retail receipts.

Proceeds from the assessment will be deposited into a separate fund within the State Department of the Treasury for use by the Authority to pay for certain services provided by a municipality in which a tourism project is located, fund tourism development activities related to the operation and maintenance of public beaches, and support tourism advertisement and promotion.

Additionally, the law removes the current $1,000-per-business limit on tourism development fees and extends these fees to renters of lodgings that are not currently subject to the State sales and use tax; removes bars and restaurants from the category of businesses allowed to offset their tourism development fees by the amount of any tax collected on predominantly tourism-related retail receipts; and exempts businesses that pay the tourism development fee or the tourism assessment from any future State or county room tax, tourism tax, beach fee, or similar tax on tourism-related business.

Finally, the law allows businesses outside of the tourism district to enter into marketing partnerships with the tourism authority. If the businesses agree to make the same payments to the tourism authority that are made by businesses in the tourism district, they can participate in the same marketing services and programs that the Authority provides to businesses in the district.

This law took effect immediately.

Cigarette Tax

P.L. 2003, C. 115 — Rate Increases
(Signed into law on July 1, 2003) Increases the cigarette tax from $.075 to $.1025 per cigarette (from $1.50 to $2.05 per pack of 20). It also specifies that an additional amount of the cigarette tax revenue is to be appropriated for health programs each year. This act took effect immediately.

Gross Income Tax

P.L. 2003, C. 9 — Exemption from New Jersey Gross Income Tax
(Signed into law on January 27, 2003) Exempts from New Jersey gross income tax the income of victims who died in the September 11, 2001, terrorist attacks against the United States.

This act took effect immediately and applies to taxable years ending before, on, or after September 11, 2001.

Litter Control Fee

P.L. 2002, C. 128 — Clean Communities and Recycling Grant Act
(Signed into law on December 20, 2002) Imposes a litter control fee on the gross receipts from sales of litter-generating products within or into New Jersey by manufacturers, wholesalers, distributors, and retailers of such products. The act also revises the Clean Communities Program and makes recycling grants available to counties and municipalities.

The litter control fee replaces the former litter control tax, which expired on December 31, 2000. The rates at which the new user fee is imposed and the categories of litter-generating products to which the fee applies are the same as the rates and litter-generating product categories that were subject to the prior litter control tax. However, Chapter 128 exempts retailers with less than $500,000 in annual retail sales of litter-generating products from the fee (the prior tax had a $250,000 retailer sales exclusion).

The new litter control fee exempts restaurants if more than 50% of their food and beverage sales are for on-premises consumption (restaurants with 50% or more of sales of food and beverages for off-premises consumption are subject to the litter control fee). Also exempt are paper product sales of roll stock produced by paper product manufacturers and wood pulp.

The litter control fee for each calendar year is due on or before March 15th of the following year. The fee applies retroactively to the year beginning January 1, 2002. There was no tax or fee due on the gross receipts from sales of litter-generating products for calendar year 2001.

Local Property Tax

P.L. 2002, C. 51 — County Tax Board Membership
(Signed into law on August 3, 2002) Requires that counties having a population of more than 510,000 shall have county tax boards with five members, no more than three of whom shall belong to the same political party. "Population" means the State population according to the most recent Federal decennial census.

The statute allows the Union County Board of Taxation to increase its membership from three members to five members. Increasing the membership of the tax board to five members is intended to result in increased efficiency in the handling of tax appeals. Chapter 51 took effect immediately.

Miscellaneous

P.L. 2002, C. 35 — Unclaimed Property
(Signed into law on July 1, 2002) Reduces the amount of time ("dormancy period") private financial organizations and business associations may hold property before transferring it to the State as unclaimed or abandoned property. It also clarifies and expands the types of properties that are to be transferred to the State after the dormancy period has expired. This act took effect immediately.

P.L. 2002, C. 43 — Camden Revitalization
(Signed into law on July 22, 2002) Establishes the "Municipal Rehabilitation and Economic Recovery Act" which attempts to rehabilitate a qualified municipality, namely the City of Camden, and restore its economic vitality, which is necessary for long-term recovery. It provides a pilot program for a limited period of time during which considerable sums of State money will be invested in the qualified municipality with appropriate State supervision by a chief operating officer who is accountable to both city elected officials and the State. The legislation contains a number of tax-related benefits for residents of a qualified municipality and businesses located there.

P.L. 2002, C. 65 — Casinos
(Signed into law on August 14, 2002) Makes several changes to the Casino Control Act and the Casino Reinvestment Act. The law took effect immediately.

P.L. 2002, C. 87 — Brownfield and Contaminated Site Redevelopment Reimbursement Program
(Signed into law on October 22, 2002) Amends the Brownfield and Contaminated Site Remediation Act to expand the redevelopment reimbursement program under which the State and a redeveloper may enter into an agreement to reimburse the developer of a brownfield site for up to 75 percent of the costs of remediating the site.

Reimbursement payments are made from revenues derived from new State taxes generated from the redevelopment of the site. Chapter 87 broadens the category of redevelopers eligible for participation in the program to include developers of residential property, allowing them to receive reimbursement upon completion of the construction of one or more new residences. It also expands the list of taxes that may be considered in estimating the amount of new State revenue to be derived from the redevelopment project. This act took effect immediately.

P.L. 2002, C. 108 — Camden Revitalization
(Signed into law on December 4, 2002) Amends and clarifies the "Municipal Rehabilitation and Economic Recovery Act" (P.L. 2002, C. 43) to ensure an accurate expression of legislative intent. Chapter 43 is currently the subject of litigation contending that it is improper.

As a result, the Legislature has imposed certain criteria limiting the application of Chapter 43 to municipalities that have been or may be subject to oversight by both a financial review board and the Local Finance Board, and which receive at least 55 percent of their budgets from State appropriations, now or in the future.

Chapter 108 clarifies and reaffirms that other similarly situated municipalities may meet the criteria of a qualified municipality. It also establishes a process for determining appropriations and allocations of monies to municipalities other than Camden that meet the definition of a qualified municipality. Chapter 108 took effect immediately and is retroactive to June 30, 2002.

P.L. 2003, C. 33 — Use of Fiduciary Funds
(Signed into law on March 24, 2003) Permits fiduciaries to employ and compensate accountants from fiduciary funds for services rendered to the estate or trust without reducing the commissions due to the fiduciary, provided such accountings are not the usual services provided by the fiduciary.

The law also allows out-of-State banks with trust offices in New Jersey to receive equal treatment under State law as New Jersey banks with respect to the simultaneous fiduciary administration of trusts and administrative work done for operators of mutual funds.

This act took effect immediately, except for the subsection pertaining to employing and compensating accountants from fiduciary funds, which took effect on June 22, 2003.

P.L. 2003, C. 105 — Nursing Home Assessment
(Signed into law on July 1, 2003) Known as the Nursing Home Quality of Care Improvement Fund Act, this act imposes an assessment payable by nursing homes to the Division of Taxation in order to attract Federal matching funds to improve nursing home services. The aggregate amount of this assessment paid by all nursing homes combined shall not exceed 6% of the annual revenues received by all of the nursing homes (in accordance with Federal regulations).

This act took effect July 1, 2003; however, implementation of the assessment will not commence until 30 days after Federal approval of any necessary amendments in the State's plan for distribution of the proceeds of the Nursing Home Quality of Care Improvement Fund established under the act.

P.L. 2003, C. 112 — Hospital Debts
(Signed into law on July 1, 2003) Creates a Hospital Care Payment Commission to which hospitals may assign their claims for unpaid patient accounts. One of the ways the debts can be collected is through use of the existing SOIL (Set-Off of Individual Liability) program, which offsets certain debts against income tax and certain other tax rebates, refunds, and benefits that would otherwise be due to the debtor. The funds collected will be deposited in the newly created New Jersey Hospital Care Payment Fund, and then paid 50% to each participating hospital and 50% to the State after administration expenses are paid. This law took effect on July 31, 2003.

P.L. 2003, C. 114 — Hotel/Motel Occupancy Fee
(Signed into law on July 1, 2003) Imposes a 7% State occupancy fee on the rental of a room in a hotel, motel, or similar facility in most New Jersey municipalities between August 1, 2003, and June 30, 2004. For occupancies on and after July 1, 2004, the fee is reduced to 5%. It also authorizes most New Jersey municipalities to impose a uniform municipal tax on occupancies in that municipality. Between August 1, 2003, and June 30, 2004, the optional municipal tax can be less than or equal to 1%. For occupancies on and after July 1, 2004, the municipal tax may be imposed at a rate of less than or equal to 3%. The legislation makes special rate provisions for those municipalities that already impose local taxes or fees on hotel/motel occupancies. This law took effect immediately.

P.L. 2003, C. 116 — Casino Taxes and Fees
(Signed into law on July 1, 2003) Imposes on casino licensees a 4.25% tax on the value of rooms, food, beverages, and entertainment that are provided at no cost or reduced price. It also imposes an 8% tax on casino service industry multi-casino progressive slot machine revenue. In addition, Chapter 116 imposes, for State fiscal years 2004 through 2006, a 7.5% tax on the adjusted net income of casino licensees in calendar year 2002. It also imposes a fee of $3.00 per day on each casino hotel room that is occupied by a guest and increases the minimum casino parking fee in Atlantic City to $3.00 per day. This law took effect immediately.

P.L. 2003, C. 124 — Outdoor Advertising Fee
(Signed into law on July 2, 2003) Imposes a 6% fee on the gross amount collected by retail sellers for billboard advertising space in New Jersey. The fee is imposed directly on the retail seller of the advertising space and must be reported and paid on a quarterly basis. This act took effect immediately and applies to billboard advertising fees collected for any period on or after July 1, 2003, through June 30, 2004.

Property Tax Relief Programs

P.L. 2003, C. 30 — Property Tax Reimbursement
(Signed into law on March 14, 2003) Changes the annual deadline for filing an application to June 1. The law provides that property tax reimbursement checks are to be mailed to eligible applicants on or before July 15, except that payments for applications filed during the period May 1 through June 1 will be mailed on or before September 1 annually. This act took effect immediately.

Realty Transfer Fee

P.L. 2003, C. 113 — Supplemental Fee
(Signed into law on July 1, 2003) Imposes a new, graduated, supplemental fee on transfers of realty that is payable by the grantor to the county in which the deed is recorded. The new law does not increase the realty transfer fee rates on transfers by senior citizens, blind or disabled persons, and on the transfer of property that is low- and moderate-income housing. This act took effect on July 14, 2003.

Sales and Use Tax

P.L. 2002, C. 45 — Mobile Telecommunications Services
(Signed into law on July 30, 2002) Amends relevant sections of the New Jersey Sales and Use Tax Act to comply with the provisions of the Federal "Mobile Telecommunications Sourcing Act," that requires a uniform method of sourcing mobile telecommunications services for sales tax purposes.

The sourcing method prescribed by the Federal legislation assumes that all wireless calls are made at the telecommunication service subscriber's residential or business street address, whichever is the "place of primary use," and permits all calls charged to such place of primary use (whether or not actually placed at, or made to, that location) to be taxed only by the taxing jurisdiction in which said place of primary use is located.

The Federal law forbids the State taxation of mobile telecommunications by any other system or method after August 1, 2002. The New Jersey legislation applies to customer bills issued after August 1, 2002.

P.L. 2003, C. 42 — Payments of Sales Tax by Vendors
(Signed into law on April 14, 2003) Permits certain vendors of goods and services to advertise that they will pay New Jersey sales tax for their customers. The legislation requires that the advertisement must indicate that the vendor will pay the tax for the customer and it will not indicate or imply that the sale or charge is exempt from taxation. Any sales slip, invoice, receipt, or statement given to the customer must state that the tax will be paid by the vendor; and the vendor must pay the amount of tax due as trustee for and on account of the State. Vendors must remit the tax due on the retail sales or service receipts to the State in the same manner as tax collected from a customer. This act took effect immediately.

Urban Enterprise Zones

P.L. 2002, C. 68 — Population Requirements for New Joint Zone
(Signed into law on August 14, 2002) Modifies the population parameters governing eligibility for the establishment of a joint urban enterprise zone which was authorized in a county of the sixth class (Cape May County) pursuant to P.L. 2001, C. 347. Amendment of the population requirements was necessary to clarify that North Wildwood qualifies for inclusion in the zone.

Chapter 68 took effect immediately and is applicable to zones designated on or after January 6, 2002.

COURT DECISIONS

Administration

Calculation of 90-Day Time Period to File Complaint
Somnuk Suecharon t/a Sammy's Bagel & Deli v. Director, Division of Taxation, decided November 4, 2002; Tax Court No. 002857-2001. On February 15, 2002, the Division issued by certified mail its final determination to plaintiff which stated that plaintiff had 90 days from the date of the final determination to appeal to the Tax Court in accordance with N.J.S.A. 54:51A-13 et seq. Plaintiff alleges that the Division informed its accountant, pursuant to the accountant's telephone call, that plaintiff must file on or before May 17, 2002. Plaintiff forwarded its complaint on May 16, 2002, and it was filed with the Tax Court on its May 17, 2002, received date, 91 days after the date of the final determination. The Division moved to dismiss the complaint as being untimely filed.

The Court found that there was no merit in plaintiff's argument that the Division was estopped from disputing the timeliness of the appeal because a representative of the Division allegedly advised plaintiff's accountant that the filing deadline was May 17, 2002. Furthermore, the Court stated that plaintiff is charged with knowledge of the law.

The Court ruled that the calculation of the 90-day period is pursuant to the *rules of court*. One of the *rules of court* permits three days to be added to the period to file the complaint when service of the notice is made by ordinary mail. Finding that there were good reasons to apply the same rule to notices sent by certified mail in order to secure a just determination, the Court held that the complaint was timely filed. The Tax Court acknowledged that its determination in this case is inconsistent with another Tax Court case, *Heico,* where the Court determined that the *rules of court* did not apply to this issue. (See *New Jersey State Tax News,* Volume 31, Numbers 2/3, Summer/Fall 2002, page 27.)

The Director, Division of Taxation, has filed an interlocutory appeal with the Superior Court, Appellate Division.

Time Period to Protest, Request a Revision, or File Refund Claim
Dennis Boggi Enterprises, Inc. v. Director, Division of Taxation, decided January 3, 2003; Tax Court No. 003859-2002. After conducting an audit, the Division issued its notice of assessment related to final audit determination on January 22, 2001, for the sales and use tax period beginning January 1993 and ending December 1999. Although plaintiff claimed that its accountant filed a protest on January 31, 2001, the Division had no record of this protest being received and plaintiff's accountant's mailing records indicated that the notice was mailed on February 6, 2001. The Division acknowledged that it received a protest letter dated May 17, 2001, that stated that the accountant intended to protest the assessment and inquired as to why a hearing date was not yet set. On September 3, 2001, plaintiff executed an installment payment agreement that was later terminated because plaintiff did not comply with it. On November 26, 2001, plaintiff filed a claim for revision of the audit assessment that was denied on April 29, 2002, because the paperwork did not represent a claim for refund. Plaintiff appealed that denial claiming that there are three methods to protest an assessment: (1) appeal it; (2) pay the tax and file a refund claim; and (3) request a revision of the assessment.

Pursuant to the statutes, a taxpayer is permitted to either apply to the Division for a hearing or appeal to Tax Court within 90 days after the date of the determination notice to challenge the assessment. The Court found that although plaintiff's accountant's mailing records indicated that the protest was mailed on February 6, 2001, there was no reliable, corroborated evidence of this fact. On the other hand, the Division submitted an affidavit that no protest was received within the statutory period. Therefore, the Court ruled that the May 17, 2001, letter was the initial protest and that this date was beyond the statutory time to request a hearing.

Plaintiff's claim that it is entitled to a refund or revision is governed by N.J.S.A. 54:32B-20(b), which states that a person is not entitled to a revision, refund, or credit where either the person had the opportunity for a hearing or had a hearing unless the person meets the requirements of N.J.S.A. 54:49-14 as follows: (1) the assessment was neither protested nor appealed; (2) the assessment was paid in full within one year of the expiration of the period to protest; (3) the refund claim is filed within 450 days of the expiration of the period to protest; and (4) the amount of the refund claim does not exceed the assessment paid. The Court found that because plaintiff never paid the tax assessment it would not be entitled to file for a refund claim. The Court ruled that a claim for revision is effectively either a claim for refund or an untimely protest of the audit assessment and that plaintiff is not entitled to an additional opportunity to appeal where plaintiff has not paid the tax and previously had an opportunity to appeal the audit assessment. It was also noted by the Court that N.J.S.A. 54:49-14 applies only to returns filed on or after January 1, 1999.

Responsible Person

David Lee v. Director, Division of Taxation, decided May 15, 2003; Appellate Division No. A-3784-01T2. The Appellate Division upheld the Tax Court's determination that plaintiff (Lee) was liable as the responsible person for sales and use taxes of the corporation Exterior Power Sweeping (EPS) for substantially the reasons and conclusions expressed by the Tax Court below.

Lee was the owner, president, and sole officer of EPS until the termination of the business. EPS ceased business operations in September 1989, and was dissolved in 1991. In 1991, the Division assessed sales and use tax against the corporation for the period October 1, 1983, to June 30, 1989. Sales and use tax returns were not filed with the Division for that period, nor were they filed thereafter. EPS protested the assessment and the Division issued a final determination in 1993. EPS filed a complaint with Tax Court that vacated the assessment in 1997. The Division appealed, and the Appellate Division reversed the Tax Court on April 30, 1999. On May 21, 1999, the Division issued a Notice of Finding of Responsible Person Status to Mr. Lee for the sales and use tax liabilities of EPS.

Lee did not really dispute that he was a responsible person of EPS; however, he claimed that the responsible person notice was inequitable and barred by either laches, or estoppel, or both. The Tax Court would not set aside the assessment on the basis of laches or estoppel. The Tax Court found that Lee was chargeable with knowledge of the statutes and his admitted actual knowledge renders less forceful his equitable arguments. Lee did not demonstrate detrimental reliance on any action or inaction of the Division, and failed to demonstrate that the Division deferred sending the responsible person notice to him so that interest would accrue. Furthermore, the Tax Court noted that there is a general reluctance of the courts to grant estoppel against a public official entity.

Lee also claimed that the May 21, 1999, responsible person notice was untimely due to the three-year statute of limitation period. Although no returns were ever filed, he alleged that the providing of information to the Division during the audit was a *de facto* filing of those returns. The Tax Court rejected the theory of *de facto* filing. However, the Tax Court stated that even if it accepted *de facto* filing, the statute did not limit the time period to collect taxes from a responsible person that were determined to be due within three years of the alleged *de facto* filing date.

Corporation Business Tax

Timeliness of Refund Claim

Lenox, Incorporated v. Director, Division of Taxation, decided April 20, 2001; Tax Court Nos. 007049-98 and 007050-98. Plaintiff filed timely Federal income tax returns and New Jersey Corporation Business Tax (CBT) returns for fiscal years ending (FYE) April 30, 1985, 1986, and 1987.

On January 17, 1989, plaintiff filed amended Federal returns (Form 1120X) with the Internal Revenue Service (IRS) to claim abandonment losses for FYE April 30, 1985, and 1986. On March 1, 1989, plaintiff forwarded copies of these 1120X forms to the Division. The Division completed their audit on July 21, 1989, and allowed the full amount of abandonment losses. The IRS completed its audit of the FYE April 30, 1984, and 1985 returns in July 1990 and issued a revenue agent's report (RAR) on July 27, 1990. The IRS recommended the full amount of the claimed FYE April 30, 1985, abandonment loss and further stated that plaintiff was also entitled to an additional loss due to adjustments from the reallocation of basis. Plaintiff consented to the RAR. By letter dated October 26, 1990, the IRS advised plaintiff that it accepted the FYE April 30, 1984, and 1985 returns with the July 27, 1990, RAR adjustments. Plaintiff claimed that it received this letter on October 31, 1990.

On July 30, 1990, plaintiff filed a second 1120X form for FYE April 30, 1986, and initial forms for FYE April 30, 1987, and 1988 with the IRS. These amended returns incorporated the adjustments from the July 27, 1990, RAR because they flowed through to these following years. The IRS revenue agent accepted these adjustments with some changes and the IRS accepted this report on November 19, 1992.

On January 23, 1991, plaintiff sent the Division certified mail that contained the CBT Form IRA-100, which reports IRS changes to Federal taxable income, for FYE April 30, 1984, and 1985, worksheets reflecting the calculation of "corrected taxable income" for FYE April 30, 1986, and 1987, and amended CBT returns for FYE April 30, 1988, and 1989. The Division received the certified mail on January 25, 1991.

In 1992, the Division refunded to plaintiff amounts attributable to FYE April 30, 1985, 1986, and 1987. In 1996, the Division issued plaintiff a Notice of Erroneous Refund requesting that the refund be returned due to the untimely filing of the refund claims and reports of changes made by the IRS.

In determining whether CBT refund claims were timely filed for periods prior to July 1, 1993, the applicable statute and regulations differentiated between refund claims and refund claims pursuant to IRS changes. In general, N.J.S.A. 54:49-14 restricted refund claims to a two-year statute of limitation period commencing from the date of payment of the original or additional assessed tax. An exception to the general rule involved a refund due to IRS changes. In this situation, N.J.A.C. 18:7-13.8(d) stated that the refund claim's two-year limitation period commenced on the date the IRA-100 was timely filed with the Division. In order for the IRA-100 to be timely filed, N.J.S.A. 54:10A-13 required that the IRA-100 be received by the Division within 90 days after the IRS final determination of change or correction.

The Court determined that plaintiff's claimed abandonment losses for FYE April 30, 1985, and 1986 were not IRS changes to the extent the losses were allowed in connection with an audit by the Division. As plaintiff forwarded copies of the 1120X forms to the Division on March 1, 1989, these refund claims were held to be subject to and barred by the N.J.S.A. 54:49-14 two-year statute of limitation period to file a refund claim.

The Court decided that the revenue agent's finding of the additional loss for FYE April 30, 1985, due to reallocation of basis was an IRS change. Turning to the claimed losses for the FYE April 30, 1986, and 1987 the Court found that these losses were the flow-through effects of the July 27, 1990, RAR relating to the FYE April 30, 1985, amended return. Therefore, the Court determined that the FYE April 30, 1986, and 1987 losses were IRS changes because the July 27, 1990, RAR did not directly change the tax liability for those years.

Both plaintiff and defendant agreed that the IRS final determination, for purposes of N.J.S.A. 54:10A-13, referred to the IRS October 26, 1990, letter. However, the parties disagreed as to when the 90-day period commenced for purposes of filing the IRA-100. The Court ruled that the date of the IRS final determination letter commenced the 90-day period reasoning that if date of taxpayer receipt controlled, then evidence of receipt would be solely based upon the plaintiff's testimony. The Court noted that the IRS was not required to send the final determination by certified or registered mail. Finding that the IRS final determination was dated October 26, 1990, the Court calculated the 90th day as January 24, 1991. Although plaintiff mailed the IRA-100 on January 23, 1991, the Division did not receive the IRA-100 until January 25, 1991. Consequently, the Court held that the IRA-100 was filed one day late and therefore plaintiff was not able to file a refund claim pursuant to N.J.A.C. 18:7-13.8(d). In refusing to exercise equitable powers, the Court noted, among other things, that plaintiff could have delivered the IRA-100 by hand or overnight service and thereby timely filed the form. As to upholding the regulation's condition that the timely filing of the IRA-100 was required to extend the statute of limitation period, the Court noted that this issue had previously been decided in *Sharps, Pixley, Inc.* and that the regulation had not since been changed by the Legislature.

Receipts Earned in New Jersey

Mayer & Schweitzer v. Director, Division of Taxation, decided September 18, 2002; Tax Court No. 001800-2000. Plaintiff is a New Jersey corporation that purchased securities with its capital for its own inventory that is held in a trust account with a trust company in New York. Plaintiff is engaged in the business of selling those securities for profit and did not charge commission on the sales. The plaintiff operated offices in New Jersey, Florida, Illinois, and Colorado. The New Jersey offices housed traders, sales, administration, operations, systems, and compliance personnel. The Florida and Illinois offices contained traders, sales, and service personnel, and the Colorado office operated with sales and service personnel. The traders were not limited in geographic scope and therefore dealt with customers in the 22 states where plaintiff was registered or licensed and other states where license or registration was not required. However, the majority of the securities were purchased and sold from the New Jersey office. Most customer orders were electronically executed and processed through the New Jersey office where the data processing system was located. After a sale was consummated, the trust company electronically transferred the stock from plaintiff's account into the customers' accounts throughout the United States, but physical transfer of the securities was rare. Title passed to the purchaser in the state in which the purchaser was located. Plaintiff's customers were mainly other broker dealers and institutional customers who needed the securities to perform transactions for their own customers.

The New Jersey corporation business tax (CBT) allowed multistate businesses to apportion income among states in which they conduct business in determining the amount of tax owed to New Jersey. On its 1992–1995 CBT returns, plaintiff calculated its New Jersey receipts, for purposes of the numerator of the N.J.S.A. 54:10A-6(B) receipts fraction, by including the trading profits from trades performed by its New Jersey employees. Plaintiff filed amended returns that included only sales to customers located within New Jersey in the New Jersey receipts calculation and therefore resulted in refunds due plaintiff.

The Division denied the refunds by not accepting the basis for amending the returns.

In deciding whether the receipts were attributable to New Jersey, the Court looked to N.J.A.C. 18:7-8.12, which essentially stated that intangible income is included in New Jersey receipts where the taxable status of the intangible asset is in New Jersey. The taxable status of an intangible is defined as the commercial domicile of the owner unless the intangible has been integrated with business carried on in another state. The Court noted that the Legislature had not defined the term "integrated with" so that its parameters needed to be determined on a case-by-case basis.

The Court held that plaintiff's sales are allocated to the state of the customer's location. The Court determined that plaintiff was carrying out its business throughout the United States and that its business involved the exploitation of out-of-State markets. Therefore, the security sales were ruled to be "integrated with" business carried on in other states. The Court reasoned that its decision is consistent with the statute and regulation, principles of fairly apportioning income to states in which the corporation does business, as well as prescribed by the current N.J.S.A. 54:10A-6(B) as it was amended in 2002.

Recoupment of Erroneous Refund
Lenox, Incorporated v. Director, Division of Taxation, decided December 4, 2002; Tax Court No. 007049-98 and 007050-98. On July 8, 1992, the Division issued plaintiff a refund check based upon refund claims and a Form IRA-100 report of IRS changes, neither of which was timely filed as determined by the Tax Court. (See *Lenox, Incorporated v. Director, Division of Taxation,* decided April 20, 2001; Tax Court No. 007049-98 and 007050-98, summarized in the spring 2003 issue of *New Jersey State Tax News,* Vol. 32, No. 1, page 12.)

In December 1996, the Division issued plaintiff a Notice of Erroneous Refund requesting that the refund be returned due to the untimely filing of the refund claims and the Form IRA-100 report of changes made by the IRS. Plaintiff refused to return the refund claiming that the Division has neither statutory nor inherent authority to recover the refund; the refund recovery is equivalent to a tax assessment that would be barred by the statute of limitations; due to the four and one-half years between the date of payment of the refund and the request for its return that the recovery is barred by laches or estoppel; and that by issuing the refund the Division waived defenses to the timeliness of the refund claims.

The Tax Court relied on *Playmate Toys* where the Appellate Division held that the Division had inherent authority to recoup erroneous refunds. In affirming the Appellate Division's decision, the New Jersey Supreme Court added that the Division's powers were not "boundless" and that here the Division's recovery was similar to the correction of a clerical error rather than an error in judgment.

After reviewing other court cases, the Tax Court defined the term "error in judgment" as used in *Playmate Toys* to "refer only to an erroneous final determination of the merits of a taxpayer's liability for tax, resulting from a mistaken interpretation of substantive law or a misunderstanding of the facts relating to the determination." Therefore, the Court ruled that the Division's error as to the timeliness of plaintiff's filing the IRA-100 and refund claim was a clerical error. Consequently, the Court held that plaintiff must return the erroneous refund with interest from the date plaintiff received the Notice of Erroneous Refund. The Court reasoned that the term "clerical error" should be broadly construed so that the Division may protect the public fisc and promote public interest.

Regular Place of Business
River Systems, Inc. v. Director, Division of Taxation; Rubachem International, LTD. v. Director, Division of Taxation; and Rubachem, Inc. v. Director, Division of Taxation, decided March 14, 2003; Appellate Division No. A-2741-01T3. The Appellate Division affirmed the Tax Court's holding for the Division for substantially the reasons in the Tax Court opinion that was summarized in the *New Jersey State Tax News*, Volume 31, Numbers 2/3, Summer/Fall 2002, page 31. Previously, the Tax Court held that taxpayers did not maintain a regular place of business outside New Jersey because the New York business office and employees belonged to a separate, related company.

Change of Filing Status
Chemical New Jersey Holdings, Inc. v. Director, Division of Taxation, decided April 25, 2003; Tax Court No. 000213-2001. In 1992 and 1993, plaintiff (Chemical) filed corporation business tax returns as an investment company. In 1999, the Division assessed additional tax after it determined that Chemical failed to qualify as an investment company. After receiving its final determination, Chemical timely appealed to the Tax Court in February 2001 on the basis that it was denied its status as an investment company. Approximately one year later, Chemical filed an amended complaint retracting its initial claim and alleged that its filing status should be as a financial business corporation. Chemical never filed returns as a financial business corporation for either year at issue.

In its previous September 2002 bench decision, the Court decided that (1) the Division's assessment was timely, (2) the doctrine of equitable recoupment was inapplicable because the case did not involve an effort to set off or credit previous tax payments against the assessment, and (3) Chemical could not obtain a refund as the time period for refund claims had expired before Chemical alleged its status as a financial business corporation.

The Court was left to decide the sole issue of whether Chemical could change its filing status by asserting that it was a financial business corporation more than seven years after it filed its return as an investment company. After determining that it had jurisdiction to decide whether the assessment could be challenged on those grounds, the Court noted that the issue was analogous to a local property tax appeal where the claim for farmland assessment is different than the claim contained in the application for farmland assessment. In those cases, the Tax Court consistently held that an applicant is bound by the application unless there was a timely amendment. The Court stated that the rationale was that the initial filing was regarded as establishing the basis for government examination and that the government was limited to a statutory period to analyze, inspect, and investigate the taxpayer's filing. Therefore, the Court held that Chemical could not circumvent the statutory requirement that it file timely amended returns as a financial business corporation within the statutory period for refunds by claiming that it was entitled to a different filing status in the Tax Court appeal. The Court noted that plaintiffs could assert alternative legal theories subject to the considerations of due process and unfair prejudice; however, the Court determined that a change in filing status was not simply an alternative legal theory because filing status controlled the entire taxing process.

Gross Income Tax

Keogh Plan Contributions
John and Barbara Reck v. Director, Division of Taxation, decided December 19, 2002; Supreme Court of New Jersey No. A-93 September Term 2001. Plaintiff husband is a partner in an accounting firm. Contributions on each partner's behalf were made by the partnership to a qualified Internal Revenue Code (IRC) 401(a) Keogh plan. In calculating his distributive share of partnership income for the 1992 and 1993 tax years, plaintiff deducted those contributions. The Division of Taxation denied those deductions on the basis that only 401(k) Keogh Plan contributions were deductible per statute.

In a 5–2 decision, the majority of the New Jersey Supreme Court upheld the Appellate Division's ruling that the partnership's pension plan contributions are deductible only under a 401(k) plan substantially for the reasons expressed in the Appellate Division's opinion. The Appellate Division found that although N.J.S.A. 54A:6-21 stated that gross income does not include employer contributions on behalf of its employees to a 401(k) plan, it does not address 401(a) plans. Hence, the Appellate Division reasoned that 401(a) contributions are not deductible even though the contributions are not expressly prohibited as deductions by statute.

The minority of the New Jersey Supreme Court dissent would have upheld the Tax Court's reasoning that the partnership's contributions on behalf of partners to the Keogh Plan are deductible in calculating the partner's distributive share of partnership income because the contributions constitute ordinary and necessary deductible business expenses pursuant to N.J.S.A. 54A:5-1b, which defines net profits from business.

Partnership's Discharge of Indebtedness Income
Michael and Patricia Scully and James Scully v. Director, Division of Taxation, decided January 13, 2003; Appellate Division Nos. A-1816-01T3 and A-2360-01T3. The Appellate Division affirmed the Tax Court's holding for plaintiff for substantially the reasons in the Tax Court opinion that was summarized in the *New Jersey State Tax News,* Volume 31, Number 1, Spring 2002, page 15, and is reprinted below for the reader's convenience.

> Plaintiffs Michael Scully and James Scully each own a 48.5% limited partnership interest and a 1% general partnership interest in Port-O-Call Associates, a New Jersey limited partnership (the "Partnership"). Additionally, each owns 50% of the corporate stock of a Pennsylvania corporation that owns a 1% general partnership interest in the Partnership.
>
> The Partnership purchased a hotel with a $7 million mortgage. Subsequently, the mortgagee became insolvent and the mortgage was assigned to a corporation that acted as the receiver. Thereafter, the receiver sold the mortgage loan to Optimum Mortgage Investment Company for approximately $2 million less than the note's principal balance. Optimum's mortgage purchase was financed by the plaintiffs pursuant to an agreement that paid Optimum a fee and obligated Optimum to assign the mortgage to plaintiffs. Thereafter, plaintiffs assigned the mortgage to the Partnership.
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> The Partnership's Federal income tax return reported the current principal balance of the note as a capital contribution and the $2 million difference between the previous and current principal balance of the mortgage as debt-forgiveness income. The Partnership's Pennsylvania information return reported the same

capital contribution but reported the $2 million difference as "Net profits from business…apportioned to Pennsylvania."

The Director determined that the Partnership realized discharge of indebtedness income in the amount of approximately $2 million, the difference between the prior mortgage principal balance and the amount of the mortgage principal when the plaintiffs contributed the loan to the Partnership which thereby discharged the mortgage debt. The Director contended that this amount is attributable to plaintiffs as discharge of indebtedness income that occurred "within a business entity" under N.J.S.A. 54A:5-1(k) and (b).

The issue before the Court was whether partners are subject to gross income tax on discharge of indebtedness income realized by the Partnership. Relying on *Smith v. Director* the Court determined that a partnership's discharge of indebtedness income must arise in the ordinary course of partnership business operations to be includable in the partner's gross income. Otherwise the discharge of indebtedness income would retain its character, and as such, discharge of indebtedness, is not a category of income subject to gross income tax.

Holding for plaintiffs, the Court decided that the transaction generating the income was the discharge of the loan not the plaintiffs' contribution of the mortgage loan to the Partnership. The Court found that neither the discharge of the loan nor the financing of the hotel was part of the Partnership's ordinary business for purposes of N.J.S.A. 54A:5-1(b). The Court noted that there were very few, if any, circumstances where discharge of indebtedness income would be includable in a partner's distributive share of partnership income under N.J.S.A. 54A:5-1(k) because it is unlikely that a partnership would receive discharge of indebtedness from third parties as a regular part of its business operations.

Partnership's Discharge of Indebtedness Income
Richard and Sharon Miller v. Director, Division of Taxation, decided January 14, 2003; Appellate Division No. A-2287-01T3. The Appellate Division affirmed the Tax Court's holding for plaintiff for substantially the reasons in the Tax Court opinion that was summarized in the *New Jersey State Tax News,* Volume 31, Number 1, Spring 2002, page 15, and is reprinted below for the reader's convenience.

Plaintiff Richard Miller is a partner of a New Jersey general partnership (the "Partnership"). The Partnership's only asset is one piece of real estate encumbered by a mortgage that is owned as real estate investment. This real estate is leased to a law firm some of whose partners are partners in the Partnership. When the real estate's value dropped significantly below the principal balance of the mortgage loan, the mortgagee reduced the principal balance upon the Partnership's request for a reduction.

The Partnership reported the reduction in the principal balance as other income on its Federal income tax return but did not report it on the Partnership's New Jersey tax return. Plaintiff's Federal Schedule K-1 reported his proportionate share of the mortgage reduction as other income but did not report it on either plaintiff's Schedule NJK-1 or New Jersey gross income tax return. The Director determined that the mortgage reduction resulted in forgiveness of indebtedness income to the Partnership and thereby was includable in the partner's distributive share of partnership income.

The Court applied its legal analysis in *Scully*, above, to the facts of this case. The Court noted that there were three differences between the cases most notably that in the instant case there was no question that the Partnership received discharge of indebtedness income and that here the real estate is owned as an investment as opposed to as a hotel and restaurant. As in *Scully*, the Court stated that discharge of indebtedness income "is taxable to a partner only if attributable to a partnership's ordinary business operations."

The Court ruled that the plaintiff was not subject to the gross income tax on the Partnership's discharge of indebtedness income because the income relating to the mortgage loan is not includable in the Partnership's net profits from business. The transaction involving the mortgage loan is in the nature of a capital transaction, not an ordinary business operation. Moreover, the Court added that even if the loan transaction constituted part of the partnership's ordinary business operations, the income-generating event is the reduction in principal balance, which is not part of the partnership's ordinary business operations.

S Corporations and Charitable Contributions
Myron and Elaine Adler v. Director, Division of Taxation, decided March 24, 2003; Tax Court No. 002025-2001. Plaintiffs (Adlers) were shareholders of Myron Corporation, which was organized for tax purposes as an S corporation. In 1994 and 1995, Myron Corporation made charitable contributions to qualified charitable organizations. The Division determined that the charitable contribution deductions for purposes of determining Myron Corporation's corporation business tax liability were proper. However, the Division disallowed the deductions

of Myron Corporation's charitable contributions in calculating the Adlers' share of S corporation income for gross income tax liability purposes.

The Tax Court ruled that the statute's express language permitted the Adlers to deduct Myron's charitable contributions in determining their share of S corporation income. The Court found that N.J.S.A. 54A:5-10 provided that a shareholder's share of S corporation income for gross income tax purposes was to be calculated in accordance with I.R.C. 1366. In turn, I.R.C. 1366 stated that deductions pursuant to I.R.C. 702(a)(4) are included in determining an S corporation shareholder's Federal income tax liability. Finally, I.R.C. 702(a)(4) permitted partners to deduct qualified charitable contributions in determining their distributive share of partnership income. Even though I.R.C. 702(a)(4) stated partners, it was found to be applicable to S corporation shareholders because of the specific I.R.C. 1366 reference.

Local Property Tax

Exemption Status
City of Long Branch v. Ohel Yaacob Congregation, decided January 21, 2003; Tax Court No. 002643-2001. Plaintiff City of Long Branch appeals a judgment of the Monmouth County Board of Taxation applicable to tax year 2001 which exempts property used to house visiting rabbis and other clergy and also to store books and furniture. Defendant Ohel Yaacob Congregation claims that the property is entitled to exemption pursuant to N.J.S.A. 54:4-3.6 because it is a parsonage or, alternatively, because it is a building actually used in the work of an association or corporation organized exclusively for religious purposes.

The Congregation first claims that the subject property is a parsonage and exempt under N.J.S.A. 54:4-3.6, which states that the property eligible for exemption includes "the buildings, not exceeding two, actually occupied as a parsonage by the officiating clergymen of any religious corporation of this State.…" The subject property was purchased for the purpose of housing visiting clergy. While the Congregation ordinarily consists of 60 to 80 families, the summer influx of an additional 400 to 500 families requires that additional clergy serve the synagogue. The Court found that visiting clergy did not fit within the definition of "officiating clergyman," which has been defined as "a settled or incumbent pastor or minister, that is, a pastor installed over a parish, church or congregation." The Court also found that the property was not used as a parsonage meaning a residence or home and not just a hotel room or other temporary housing. Therefore, the property was not eligible for exemption as a parsonage.

This leads to the issue of whether or not a parsonage is the only type of residential property owned by a religious organization which is eligible for exemption, or does the specific exemption for parsonages preclude qualification for exemption of other categories of residential property used for religious purposes? There is no evidence that the Legislature ever intended for parsonages to be included in the general category of property used for religious purposes. Parsonages have always been treated separately and as a historical matter have not been regarded as property used for religious purposes. The Court found that although a residential property not amounting to a parsonage may be exempt as used for religious purposes, a residence principally used as a parsonage is not eligible for the same exemption and is limited to the express provisions for parsonages.

The Court, citing *City of Long Branch v. Monmouth Medical Center,* 138 N.J. Super. 524 (App. Div. 1976), aff'd, 73 N.J. 179 (1977), applied a test of "reasonable necessity": the exemption claimant must demonstrate a compelling need for the services performed by the resident of the property for which exemption is claimed and also that those services are integral with the exemption functions of the entity. The Court found that the subject building used for the housing of the visiting clergy is necessary for the proper and efficient operation of the Congregation during summer months and is not a mere convenience. Furthermore, the visiting clergy make it possible to accommodate the enlarged membership during the summer, and it is that membership which provides much of the financial support for the year-round operation of the Congregation.

Finally, the Congregation claims exemption because the property was used for storage of religious books and furniture. The Court, citing *Roman Catholic Archdiocese of Newark v. East Orange City,* 17 N.J. Tax 298, 313-315 (Tax 1998), aff'd, 18 N.J. Tax 649 (App. Div. 2000), concluded that "the storage of documents and artifacts of a religious nature or related to the operation of the church should be deemed a religious purpose consistent with the exemption granted by the statute."

Because the Court found that the housing of visiting clergy was a use of the subject property for religious purposes, and because the use of an otherwise qualified property for the storage of books and personal property used in the operation of the religious organization is consistent with the exemption of property used for religious purposes, the Court affirmed the judgment of the Monmouth

County Board of Taxation, citing that the subject property was actually and exclusively used for religious purposes.

Note: N.J.S.A. 54:4-3.6 was amended by P.L. 2001, C. 18, to delete the word "exclusively," from the religious property exemption when referring to use.

Property Tax Relief Programs

NJ SAVER Rebate: Eligible Resident
Joel Cooper v. Director, Division of Taxation, decided December 6, 2002; Appellate Division No. A-2074-01T2. Plaintiff is the sole shareholder of a corporation that has the sole purpose of holding title to plaintiff's primary residence. Plaintiff resides in this residence and filed for an NJ SAVER rebate. Although the Division denied his NJ SAVER rebate because title to the property was held by a corporation, the Tax Court reversed and ruled that in this case the sole shareholder of a corporation should be treated the same way as a partner of a partnership, who is entitled to a rebate to the extent of his partnership interest. See *New Jersey State Tax News,* Volume 31, Numbers 2/3, Summer/Fall 2002, page 33.

The Appellate Division reversed, holding that plaintiff was not entitled to the rebate because the corporation held title to the property. The Appellate Division reasoned (1) that the statute was clear and unambiguous on its face as it included ownership through partnerships but not through corporations on the list of eligible legal entities, (2) that there was nothing in the legislative history indicating that the Legislature intended to treat partnerships and corporations alike, and (3) because there is a legal distinction between a corporation and its shareholders.

NJ SAVER Rebate: Untimely Filing
David Curzie v. Director, Division of Taxation, decided December 9, 2002; Tax Court No. 005346-2002. Plaintiff received the 2000 NJ SAVER rebate application but thought it pertained to his income taxes and therefore placed it with his other income tax documentation. After relatives mentioned that he should be receiving his rebate soon, plaintiff became concerned. Plaintiff alleges that he called the Division and was told to file the application regardless of its timeliness. Thereafter, plaintiff filed the 2000 application on January 25, 2002.

The Tax Court affirmed the Division's denial of plaintiff's rebate for failure to timely file after finding that the rebate application was due on or before October 22, 2001. Turning to plaintiff's argument that rather than being denied the entire rebate he should either be fined or at least entitled to a partial rebate, the Tax Court denied this request explaining that the rebate was all or nothing as there were no relief provisions for untimely filers.

NJ SAVER Rebate: Untimely Filing
Adam Ress v. Director, Division of Taxation, decided December 9, 2002; Tax Court No. 005242-2002. Plaintiff received his 1999 and 2000 NJ SAVER rebate applications but thought they pertained to his income taxes and therefore kept them with other income tax documentation that would later be provided to his tax preparer. The tax preparer of his 2000 income tax return apparently did not consider the application. Plaintiff hired a new tax preparer for his 2001 income tax return who saw the 1999 and 2000 applications and inquired as to whether plaintiff filed for the rebates. Thereafter, plaintiff filed his 1999 and 2000 NJ SAVER rebate applications on January 10, 2002.

Finding that the 2000 rebate application was due on or before October 22, 2001, the Tax Court affirmed the Division's denial of plaintiff's 2000 rebate for failure to file timely. Also, the Tax Court found the 1999 rebate application to be untimely filed as it was due August 31, 2000.

NJ SAVER Rebate: Untimely Filing
Gail Zeyack v. Director, Division of Taxation, decided December 9, 2002; Tax Court No. 005345-2002. Plaintiff filed her 2000 NJ SAVER rebate application on December 26, 2001, which was past the October 22, 2001, deadline. Plaintiff testified that the application was filed late because she had a very bad year causing her to be depressed and overwhelmed. Plaintiff's father suffered a stroke, lost his speech, and then passed away in January 2000. As the only child, she administered her father's funeral arrangements. Plaintiff had to take care of her mother, who had rheumatoid arthritis and could not be left alone. Plaintiff was not working due to disability and received disability payments from February 11, 2000, to July 28, 2000. Plaintiff lost her job, suffered from and was treated for back pain, took medication for pain and for depression, and was in the process of being divorced. Plaintiff's doctor provided a letter requesting that plaintiff be allowed to file the application late because she was unable to file timely due to a medical condition.

The Court pointed out that the rebate application was due on or before October 22, 2001, and that the information plaintiff provided pertained to the calendar year 2000, not to 2001. Plaintiff then testified that her mother was in and out of the hospital six times in 2001, her mother was given six months to live, and that her mother died in May 2001. As to her divorce proceedings, plaintiff testified that a guardian had to be appointed for her in July 2001. Defendant noted that plaintiff filed her income tax returns timely for tax years 2000 and 2001; however, plaintiff stated that was due to her husband's help because they were filing jointly.

Although the Court sympathized with plaintiff's medical conditions as well as the events occurring in plaintiff's life and accepted that plaintiff had an illness, the Court stressed that plaintiff did not prove why she was unable to file the application timely. The Court noted that plaintiff filed her income tax returns timely and took care of her day-to-day business. The Court found that the physician's note was general and insufficient, it did not state the time period she was sick or the extent of her disability, and did not state why she was unable to file the application. Consequently, the Court ruled that plaintiff provided no evidence that showed that she was physically or mentally unable to file the application in a timely manner. Also, the Court referred to the case of *Hovland* where the Tax Court held that plaintiff had good cause to file the 1982 homestead rebate late because plaintiff was diagnosed with spinal cancer in November 1982, hospitalized until early January 1983, bedridden until January 18, 1983, and filed his rebate application within a reasonable time on January 21, 1983, four days after the January 17, 1983, deadline.

Sales and Use Tax

Exemption for Production Equipment and the Catalyst Exemption
Atlantic City Linen Supply, Inc. v. Director, Division of Taxation, decided April 26, 2002; Tax Court No. 001617-2001. Plaintiff (Atlantic City) operates a commercial laundry. Employees sort the soiled laundry by hand and process it in loads of approximately 125 pounds into a continuous batch washer, which is a computer-controlled machine. This machine is approximately 60 feet long and 10 feet high. It is capable of performing 75 different chemical processes with various chemicals that break the surface tension of the water, allowing the water to suspend and flush away soil from the fabric, break up soil trapped in the fabric, dissolve organic oils and fatty acids, and produce soaps that enable the removal of items from linen causing the items to be dissolved in the surrounding water, and oxidizing organic compounds, and neutralizing any remaining chemicals. Different types of laundry are processed using different concentrations of chemicals, varying water temperatures, and different timing of passage through the continuous batch washer. After the washing process, the laundry is pressed dry at approximately 360 degrees Fahrenheit by other special high-capacity machinery. Finally, the laundry is folded, bundled, weighed, and returned to the customer. Atlantic City serves 12 casinos as well as other customers.

Atlantic City alleged its purchases of equipment as well as parts therefor are exempt from sales and use tax under N.J.S.A. 54:32B-8.13, which provides an exemption for, *inter alia*, equipment and machinery for use or consumption directly and primarily in the production of tangible personal property by processing. The Court found that the equipment at issue satisfied the statutory requirements that it be equipment or machinery used directly and primarily in processing. However, the Court stated that there is also a requirement that the equipment produce tangible personal property, which issue is discussed below.

Atlantic City also sought exemption from sales and use tax on its purchases of chemicals pursuant to N.J.S.A. 54:32B-8.20, which grants an exemption for chemicals and catalysts that induce or cause a refining or chemical process where the chemicals are an integral or essential part of the processing operation, but are not a component part of the finished product. The Court determined that Atlantic City did use chemicals that were used to induce or cause a chemical or refining process. However, the Court stated that the statute also required that there be a finished product.

The Court ruled that the statutory and regulatory requirements of producing tangible personalty and a finished product both contemplate the creation of a new product or a substantial change in form, composition, or character, or a change resulting in the transformation of property into a different or substantially more usable product, but that it did not include the furnishing of a service. Here, the Court ruled that Atlantic City's equipment is used to perform the operation of transforming dirty, soiled, stained laundry into clean, pressed, and folded laundry. Although this cleaned laundry was found to be more usable, the Court reasoned that this was not the kind of transformation either the legislation or the regulations intended. Furthermore, the Court found that no product, within the statutory meaning, was the result of this process. The Court concluded that the predominant use of Atlantic City's equipment was in connection with the performance of a service, not the production of a product. Therefore, Atlantic City was denied a sales and use tax exemption on both its purchases of equipment and chemicals.

Regular Place of Business
Lucisano Brothers, Inc. v. Director, Division of Taxation, decided January 24, 2003; Appellate Division No. A-6466-00T5. The Appellate Division affirmed the Tax Court's holding for the Division, which principally relied on the reasoning of *Stephen Little Trucking* that was summarized

in the *New Jersey State Tax News*, Volume 30, Number 4, Winter 2001, page 19, stating that the statutory analysis was well-founded and the achieved result was substantially correct.

Lucisano is a Pennsylvania building supply company that sold and delivered building materials to New Jersey contractors and subcontractors without collecting sales tax because it argued that pursuant to N.J.S.A. 54:32B-2(w) it was not a person required to collect sales tax. The Tax Court reasoned that N.J.S.A. 54:32B-2(w) must be read in harmony with the simultaneously adopted provisions contained in N.J.S.A. 54:32B-12(b) that place the obligation to collect tax from the contractor on the vendor unless the contractor obtained a direct pay permit. The Appellate Division also gave deference to the regulations that interpret the statutes to reach the same result.